

September 27, 1937

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ARIZONA ATTORNEY GENERAL

Arizona Unemployment Compensation Commission
128 South Central Avenue
Phoenix, Arizona

Attention: Mr. Wm. McClure, Attorney

Gentlemen:

We have received the request of Clayton E. Cox, Director of the Arizona State Employment Service, a division of the Arizona Unemployment Compensation Commission, for an opinion with reference to the validity of a lease entered into by the Board of Directors of State Institutions in 1936, extending until the first day of January, 1939, entered into under the authority of Chapter 55, Laws of 1935.

Examination of Chapter 55, Laws of 1935, discloses that the Board of Directors of State Institutions is therein directed to establish offices in such parts of the state as it deems necessary for the purpose of establishing a system of public employment offices in cooperation with the terms of the Wagner-Peyser Act, enacted by the Congress of the United States and approved June 6, 1933. We presume that this lease was entered into pursuant to this authorization.

Chapter 55, Section 6, appropriates the sum of \$6,500.00 from the Governor's Relief Fund derived from the Luxury Tax for the Twenty-fourth Fiscal Year, and a like appropriation for the Twenty-fifth Fiscal Year, which year would end upon July 1, 1937. The First Special Session of the Twelfth Legislature, convened November 5, 1936, enacted the Unemployment Compensation Law of 1936, which act, insofar as applicable here, still contains the same provisions with reference to the free employment offices established under Chapter 55, Laws of 1935. This act, Section 12 thereof, transfers to the jurisdiction of the Employment Service

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Division of the Arizona Unemployment Compensation Commission all offices theretofore established under Chapter 55, together with the books, records, files and papers acquired by the Board of Directors of State Institutions under said Chapter 55, and designates the State Employment Service Division as the agency of the State for the purpose of establishing and maintaining free employment agencies. While the Unemployment Compensation Law of 1936 does not expressly repeal Chapter 55, it must be held to do so by implication.

Section 2618, R. C. A. 1928, a part of the state financial code, contains the following provision:

"No officer or state agency shall contract any indebtedness on behalf of the state nor assume to bind the state in excess of the money appropriated unless expressly authorized by law."

We are of the opinion that the lease agreement entered into by the Board of Directors of State Institutions extending beyond the appropriation period and purporting to bind the state for an obligation in excess of the appropriation granted the Board of Directors of State Institutions under Chapter 55, Laws of 1935, is contrary to the provision above quoted, and therefore invalid.

We are of the opinion that the above quoted provision, construed in the light of the other provisions of the financial code and in the light of the state budget system, contemplates that no liability shall be incurred or no contract entered into by any state officer or agency except one which may be performed and satisfied within the appropriation period; at least, that no such contract involving the expenditure of public moneys may be entered into in the absence of a direct legislative authorization so to do.

Yours very truly,

JOE CONWAY
Attorney General

MARK WILMER
Assistant Attorney General